United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-1305

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 74-1305

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

V.

SOGAARD NORMAN STRANDHOLT

DEFENDANT-APPELLANT

APPENDIX TO BRIEF OF DEFENDANT - APPELLANT

THOMAS D. CLIFFORD
COUNSEL FOR DEFENDANT-
APPELLANT
770 CHAPEL STREET
NEW HAVEN, CONNECTICUT

INDEX

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. H 422

SOGAARD NORMAN STRANDHOLT :

INDICTMENT

The Grand Jury charges:

COUNT ONE

From on or about the 2nd day of April, 1973, continuing up to and including the 19th day of April, 1973, in the District of Connecticut, SOGAARD NORMAN STRANDHOLT, the defendant, unlawfully, wilfully and knowingly did attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, to wit, materials and requirements usedin the operation of United Aircraft Corporation, by extortion, that is, by attempting to obtain money from another person, namely, an agent and representative of the United Aircraft Corporation, with that person's consent, induced by the wrongful use of threatened force and the fear of injury to persons, property and to the business being conducted by United Aircraft Corporation, in violation of Title 18, United States Code, Section 1951.

COUNT TWO

On or about the 2nd day of April, 1973, in the District of Connecticut, SOGAARD NORMAN STRANDHOLT, the defendant, knowingly, and with intent to extort money or other things of value from an agent and representative of United Aircraft Corporation, did deposit in an authorized depository for mail matter, to be sent and delivered by the Postal Service, a written communication post-marked April 2, 1973, addressed to United Aircraft Corp., Corporate Counsel, Main St., E. Hartford, Conn., To Mr. Baldwin, and containing a threat to injure the person of the addressee and of others, that is retaliation against the chairman, the president and legal counselors of United Aircraft Corporation and

their respective families, in violation of Title 18, United States Code, Section 876.

COUNT THREE

On or about the 15th day of April, 1973, in the District of Connecticut, SOGAARD NORMAN STRANDHOLT, the defendant, knowingly, and with intent to extort money or other things of value from an agent and representative of United Aircraft Corporation, did deposit in an authorized depository for mail matter, to be sent and delivered by the Postal Service, a written communication, postmarked April 15, 1973, addressed to United Aircraft Corp., Main St., Corporate Office, E. Hartford, Conn., Att: Legal Counsel Mr. Baldwin, and containing a threat to injure the reputation of United Aircraft Corporation, that is, mortification and public scorn for United Aircraft Corporation, in violation of Title 18, United States Code, Section 876.

A TRUE BILL

/s/ W. P. ABBOTT
Foreman

STEWART H. JONES
United States Attorney

/s/ JON A. SALE
JON A. SALE
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT

APR 19 1974

OFFICE OF THE FEDERAL PUBLIC DEFENDER, NH

D. C. Form No. 100 Rev.

H 477

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	Stewart H. Jones, US Attorney
SOGAARD NORMAN STRANDHOLT	~~Jon A. Eaton, Asst US Atty.~~
	450 Main St., Hartford, Conn.
	Albert Dabrowski, Asst US Atty
	For Defendant:
	Thomas C. Clifford, Pub. Def
	450 Main St.
	Hartford, Conn.

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 2 mailed	Clerk								
J.S. 3 mailed	Marshal								
Violation U. S. Code	Docket fee								
Title 18									
Sec. 1951 & 876									

DATE 1973	PROCEEDINGS
5/2	The Grand Jury at Hartford returned a True Bill of Indictment charging violation of 18 USC 1951 in ct. 1 - did attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce; and 18 USC 876 in cts. 2 & 3 - used the US mails with intent to extort money or other things of value from an agent and representative of the United Aircraft Corp. Summons to issue for next criminal calendar. (Blumenfeld, J.)m-5/3/73
5/3	Summons issued for 5/7/73 in duplicate and with ceritfied copy of the Indictment handed US Marshal for service.
5/7	PLEA of not guilty entered to all 3 counts. Ten days for motions. (Blumenfeld, J.)m-5/8/73
6/12	Continued to next jury list. (Clarie, J.)m-6/13/73
*4/25	Magistrate's papers, filed....Record of Proceedings in Criminal Cases, Complaint, Appointment of counsel appointing Public Defender, and Appearance Bond in the Amount of $10,000.00, filed.
5/8	Marshal return showing service, filed. (Summons)
	CJA 21 executed (Newman, J.) authorizing Psychological exam by John Colbert, Ph.D., filed.

USA vs. Sogaard Norman Strandholt — Criminal H-477

DATE	PROCEEDINGS
1973	
8/1	Court Reporter's Notes of Proceedings held on May 7, 1973, filed in Hartford. (Collard, R.)
8/20	CJA 21 executed, (Newman, J.), authorizing payment of $100.00 to John Colbert, Ph.D., for psychological examination of defendant.
10/9	Ready, Case #3. (Clarie, J.)m-10/10/73
10/10	JURY TRIAL: - Jury questioned on Voir Dire - 12 Jurors and 1 Alternate impanelled and sworn. Jury excused utnil Oct. 17 or 18: to be notified by Clerk's Office.(Clarie, J.)m-10/11/73
10/17	Court Reporter's Notes of Proceedings held on October 10, 1973, filed in Hartford. (Sperber, R.)
10/17	JURY TRIAL COMMENCES: 13 Jurors report - Court Exhibits A thru K, filed - Govt. exhibits 1 thru 12, filed - Defendant's Exhibits A-1 thru A-7, filed - Counsel to enter into stipulation concerning hand-writing - Counsel enter into stipulation concerning Deft. Exh. A-1 thru A-8, that the Defendant wrote these letters and envelopes - Govt. rests at 3:28pm - Atty. Clifford makes Motion for Judgment of Acquittal, Motion Denied - Defendant sworn and testified - Court adjourned at 5:00 pm until tomorrow at 10:00 am.(Clarie, J.)m-10/18/73
10/18	JURY TRIAL CONTINUES: 13 Jurors report - Request to charge filed by Atty. Clifford - Defendant resumes stand and continues testimony - Def's. Exhibit B, filed - Defense rests at 10:37am - Government files request to charge - Summations from 10:59 am until 11:25 am - Government's rebuttal at 11:26am to 11:30 am- Court charges at 11:52am until 12:22 pm. - Alternate Juror Donald Kramer excused - Jury retires to deliberate at 12:23 pm - Atty. Clifford states exception to charge - Charge to stand - Exhibits and Indictment given to jury at 12:27 pm - Jury sends out questions at 2:09 pm - Court returns to bench at 2:12 pm - Jury returns to Courtroom for further charge at 2:17 pm and retires at 2:20 pm - Atty. Clifford objects to further charge - Charge to stand - Jury sends out question at 3:35 pm - Court returns at 3:37 pm - Jury wishes to know whether they can make any specific recommendation with their verdict - Jury recalled at 3:38 pm - Question answeredby Court - Jury retires at 3:40 pm and returns with verdict at 3:42 pm - Verdict of not guilty on Count #1 and Guilty on Counts 2 & 3 ordered filed. Same bond to continue. Court adjourned at 3:45 pm.(Clarie, J.)m-10/19/73
10/19	Court Reporter's Sound Recording of Proceedings held on May 7, 1973, filed in Hartford. (Collard, R.)
1974	
1/15	Court Reporter's Transcript of proceedings held on Oct. 17 & 18, 1973 filed. (Sperber, R.)
2/25	DISPOSITION: three years imprisonment on count 2, execution of term of imprisonment suspended after serving six months whereupon the defendant shall be placed on probation for a period of two years. Condition of probation is that the Defendant receive psychiatric treatment during committment and probation. Imposition of sentence on count 3 is suspended Same bond to continue. Atty Clifford appointed for purpose of appeal. (Clarie, J.)m-2/26/74
2/26	Judgement and Commitment, filed. (Clarie, J.)m-2/28/74 Two attested copies handed US Marshal and two attested copies handed US Probation Officer in Hartford.

CONTINUED ON PAGE 2

DATE	PROCEEDINGS
1974	
2/26	Notice of Appeal, filed. Copies sent to Attys. Jones and Clifford.
2/27	Certified copies of Notice of Appeal and docket entries mailed to Clerk, USCA.
2/26	CJA 21 executed (Clarie,J.) authorizing Elliot Sperber, Court Reporter to prepare transcript.
2/28	USCA-2 Form B, filed.
3/19	Court Reporter's transcript of proceedings held on October 17 & 18, 1973, filed in Hartford. (Sperber, R.) Pages 166-238 inserted in this transcript were previously filed on 1/15/74.
3/22	Record on Appeal sent to USCA. Copies of docket entries and index sent to Attys. Jones and Clifford.
3/21	Schedule of Hearing from USCA, filed.
3/27	Acknowledgement from USCA for documents mailed on 3/22/74, filed.
3/22	CJA 21 executed (Clarie,J.) authorizing payment of $278.00 for transcript to Sperber,R. and mailed to A.O. for payment.
3/19	Court Reporter's Notes of Proceedings held on February 25, 1974, filed in Hartford. (Sperber, R.)
3/19	Court Reporter's Sound Recording of Proceedings held on February 25, 1974, filed in Hartford. (Sperber, R.)

passed the drop site?

A The Plymouth proceeded past the drop site, to the next light, took a right on Old Town Road, and went down to the Trumbull Shopping Plaza.

Q And how great a distance was there at that time between your vehicle and the Plymouth?

A Anywhere between 20 to 50 yards.

Q And upon observing the Plymouth enter the parking lot of the Trumbull Shopping Center, what happened?

A The Plymouth then proceeded to make numerous passes up and down various aisles. There were open parking spaces in some of them. And shortly thereafter we stopped the Plymouth, and placed Mr. Strandholt under arrest.

Q And then what was done with Mr. Strandholt?

A Agent Scheiner and myself transported Mr. Strandholt back to the FBI offices in Bridgeport, Connecticut.

Q Were other units notified at that time that Mr. Strandholt had been apprehended?

A That's correct.

MR. BOWMAN: I have no further questions.

CROSS-EXAMINATION BY MR. CLIFFORD:

Q Good afternoon, Mr. Connolly.

A Good afternoon, Mr. Clifford.

Q Mr. Connolly, although not part of your direct testimony, I understand that when you took Mr. Strandholt

back to the FBI headquarters he gave you a statement, didn't he?

A That is not correct, Mr. Clifford.

Q I'm sorry. Maybe I am mistaken.

I am reading what is known as an FD-302. The caption is Federal Bureau of Investigation, April 24, 1973, what purports to be a statement of Mr. Strandholt. And the interview takes place on April 19, 1973. And it is by Special Agent Harry B. Brandon, III, William F. Glossa, and Raymond A. Connolly.

A That statement was taken after we returned to the Bridgeport office.

Q I'm sorry. Were you present at the taking of this statement?

A Part of it I was, yes, sir.

Q Well, in the course of that statement, Mr. Connolly, Mr. Strandholt said that he did not really want the money, but that he just --

MR. BOWMAN: I object at this time. I don't know the basis for Mr. Clifford's cross-examination. It is completely beyond the scope of the direct.

Not only that, but he is making Mr. Connolly -- using Mr. Connolly as a surrogate.

THE COURT: Let's make it clear. Mr.

Connolly, was a statement taken in your presence from him?

THE WITNESS: Yes, sir.

THE COURT: Whether it is self-serving or otherwise, if counsel wants to ask him about it, the Court will allow it.

MR. CLIFFORD: Thank you, your Honor.

BY MR. CLIFFORD:

Q In that statement Mr. Strandholt said he did not really want the money, but he just wanted to shake up the United Aircraft; is that correct?

A That's correct.

Q "The subject said he had given United Aircraft information in 1966 concerning theft of their parts and blueprints, for making parts by Sikorsky employees"; is that correct?

A That's correct.

Q "Mr. Strandholt said he was employed by Heliparts, Inc. at that time, and that Heliparts was a competitor of United Aircraft in making parts for Sikorsky helicopters"; is that correct?

A That's correct.

Q "Strandholt said a man named Harrington, who is President of Heliparts, was buying old, out-dated parts, which were stolen by Sikorsky employees, and reworking

them and selling them to the Government as new helicopter parts"; is that correct?

A That's correct.

Q "Strandholt said that many of the parts they got from Sikorsky employees were old, and had reused seals, which were old enough to be dangerous"; did he say that?

A I believe that's a correct statement.

Q "Strandholt said that the Sikorsky employees were even throwing helicopter parts, stolen from Sikorsky, over the fence surrounding Sikorsky Aircraft Corporation, and then picking them up later and selling them to Harrington"?

A That's correct.

Q "Strandholt further advised that Sikorsky" --

MR. BOWMAN: I object at this point. If Mr. Clifford is making Mr. Connolly his witness, then he shouldn't be leading him.

MR. CLIFFORD: I can recall him on my direct case.

MR. BOWMAN: It is not even clear -- it is not even clear, your Honor, that Mr. Connolly had personal knowledge of every single conversation that took place, seeing that this isn't a written statement.

THE COURT: Is it a written statement?

MR. CLIFFORD: It is typed on the FBI

typewriter, and acknowledged by Mr, Connolly.

THE COURT: Is it signed by the defendant?

MR. CLIFFORD: Not the copy that I have, your Honor.

THE COURT: Is your copy signed?

MR. BOWMAN: No, your Honor, it is not. It is merely the product of the notes of an FBI agent.

MR. CLIFFORD: It is most unusual when the Government obtains a statement from a defendant, immediately after the arrest, that they don't offer that, your Honor. And I think it is probative in terms of, one, what was the attitude and the intent of the defendant at the time of the incident with which he is charged; and what he told the FBI at that particular time, which I think is a circumstance for which the jury can understand, or go to what his intent was.

Now, I think that is very important.

THE COURT: Well, the Court will allow it. Even though it is self-serving, he is telling you a story. He isn't admitting it, in the sense that he is charged, but he is telling his story.

For what it is worth, the jury will evaluate it.

MR. CLIFFORD: Thank you, your Honor.

Let me withdraw the last question.

BY MR. CLIFFORD:

Q "Mr. Strandholt said he had furnished all of this information to United Aircraft and had conferred with an attorney named Baldwin; that the United Aircraft told him they could not do anything with this information".

Is that what Mr. Strandholt told you?

A That was Mr. Strandholt's statement, yes, sir.

Q "Strandholt said he recently read in the paper that there had been three crashes involving Sikorsky Aircraft, and that he felt certain these crashes were due to the faulty parts sold to the Government by Heliparts, and felt that he should do something about it"; is that correct?

A That's correct.

Q "Strandholt said that he had again contacted United Aircraft Corporation and talked to an attorney named Chambers. Strandholt said that he again received no satisfaction from United Aircraft".

Is that correct?

A That's correct.

Q "Strandholt said that a few months ago he read in the paper that United Aircraft had filed a million dollar lawsuit against Heliparts, and that the suit was based on the information he had given to United Aircraft"; is that correct?

A I don't recall that statement, Mr. Clifford.

Q Well, will you accept the words? I am reading from your 302.

A I'll accept them as being correct, yes.

Q "Strandholt said he became angry with United Aircraft because he felt that the people involved should have been criminally prosecuted, because they had caused lives to be lost in helicopter crashes"; do you recall that?

A That is Mr. Strandholt's statement, yes.

Q "Strandholt further advised that it was apparent to him that United Aircraft was not concerned with the danger to people flying in the aircraft, but only with getting more money in their lawsuit"; did he say that?

A That is correct.

Q "Strandholt said that he was subpoenaed to testify in a United Aircraft lawsuit, and he conferred with an attorney retained by United Aircraft, named Wade, and was told that United Aircraft would settle out of court for $150,000.

"Strandholt said that this is where he came up with the figure of $150,000 he used in his letter to the United Aircraft".

Do you recall that?

A That's correct.

Q "Strandholt again admitted writing letters to United Aircraft, saying he did not really hurt anyone; did

not really think he could hurt a fly".

Do you recall that?

A That is correct.

Q "Strandholt said he just wanted to shake up everyone, and wanted to just get this whole story out in the open, so that people would know about it".

Do you recall that?

A Yes.

Q "Strandholt said that he really thought he owed his country something, after he had gotten a dishonorable discharge from the Navy, and thought he could do so by exposing the mess at Sikorsky".

Do you recall that?

A That is correct.

Q By the way, in relation to the word "dishonorable", do you know whether it was dishonorable or undesirable, or unsuitable?

A I don't recall, Mr. Clifford.

Q Okay. But, the word that appears is "dishonorable"; is that correct?

A I believe so.

MR. CLIFFORD: Directing Mr. Bowman's attention to the middle of page 50 of the 302: "Strandholt said that the reason he picked the Holiday Inn was because he was familiar with the area, and also

knew that it was right next to the FBI office, and he wanted to make it easy for the FBI if they were going to catch him".

BY MR. CLIFFORD:

Q Do you recall him saying that?

A That was his statement, yes, sir.

MR. CLIFFORD: No further questions.

THE COURT: Anything further of this witness?

REDIRECT EXAMINATION BY MR. BOWMAN:

Q Agent Connolly, were you present at the end of this interview?

A I believe I was, yes, sir.

Q Do you recall Mr. Strandholt making any reference to his guilt in this matter?

A Yes, sir, he indicated he was guilty.

Q And did he say anything else with reference to his feelings about what he had done to Mr. Baldwin and Mr. Chambers?

A Yes, he felt he had put them under some difficulties, and he was sorry for what he had done.

Q Did he make any reference to how he was treated by them, in his dealings?

A I believe he indicated he was treated fairly by them.

Q Do you recall, were you present for any questioning

And the Court is not going to charge on the lesser included offense. The issue still remains as to the sending of the letters, with the intent to extort.

Call the jury, Mr. Bailiff.

(Counsel argued in summation to the jury, following which the Court charged the jury as follows.):

THE COURT: Ladies and gentlemen of the jury, now that you have heard the evidence and the arguments of counsel the time has come to instruct you as to the law governing this case.

Although you, as jurors, are the sole judges of the facts, you are duty bound to follow the law as stated in the instructions of the Court, and to apply the law so given to the facts as you find them, from the evidence which is before you.

You are not to single out one instruction of the Court alone as stating the law, but you must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what you think the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in

the instructions of the Court.

Now, the indictment, this paper here that I hold in my hand, the original of which you will have with you in the jury room, is but a formal method of accusing the defendant of a crime. It is not evidence of any kind against the accused in this case, and does not create any presumption, nor permit any inference of guilt.

The law presumes a defendant to be innocent of crime. Thus, at the moment a defendant begins the trial, he stands before you free from any bias, or prejudice, or burden arising from his position as the accused. So far as you are concerned he then was innocent, and he continues innocent throughout the trial, and during the deliberations of the jury, and is overcome when, and only when, his guilt is established beyond a reasonable doubt.

This presumption also requires that if a piece of evidence offered is capable of two reasonable constructions, one of which is consistent with innocence, it must be given that construction. Whether the burden of proof resting upon the Government is sustained depends not on the number of witnesses, nor the quantity of the testimony, but upon the nature and quality of that testimony.

In order to convict one accused of crime, the jury must be satisfied beyond a reasonable doubt of the defendant's guilt. A mere preponderance of the evidence is not sufficient. And if a reasonable doubt does exist in the minds of the jury, they must acquit the defendant. If the evidence justifies, in your judgment, the conclusion that the accused is guilty, so as to exclude every other reasonable doubt as to the guilt of the defendant, then of course you will find him guilty.

Now, this term "reasonable doubt", just what does it mean? By "reasonable doubt" I do not mean to be understood as stating that the defendant must be found guilty beyond all doubt whatever, but beyond a doubt founded in reason, and arising from the evidence.

Reasonable doubt is a doubt arising from the evidence, or from a lack of evidence, after consideration of all the evidence. It is not a vague, speculative, imaginary something, but just such a doubt as would cause reasonable men and women to hesitate to act upon it in matters of importance to themselves.

Reasonable doubt means such doubt as will leave the juror's mind, after a candid and

impartial consideration of all the evidence, so undecided that he is unable to say that he has an abiding conviction or assurance of the defendant's guilt. The law does not require a person to be proven guilty beyond a mathematical certainty, but only a moral certainty.

If, after you have considered and weighed all the evidence in this case, in the light of the law as the Court will have given it to you, you have a firm, full and abiding conviction to a moral certainty that the defendant is guilty, as charged in the indictment, then this guilt has been established beyond a reasonable doubt, and then of course under those circumstances you will find him guilty.

But, if you do not have a full, firm and abiding conviction, then guilt has not been established beyond a reasonable doubt, and then you should find him not guilty, and acquit him.

In order to convict one accused of crime, all of the elements of the crime must be proven beyond a reasonable doubt. Therefore, unless the jury concludes that all the material elements of said crime have been committed by the defendant, as alleged in each count of the indictment, and said

elements have been proved beyond a reasonable doubt, the jury must bring in a verdict of not guilty.

Now, in the remainder of what I have to say to you I shall use the word "prove" or "proved" with reference to the burden which rests upon the Government, and I shall speak to you of your finding various facts or elements in the case. But, throughout, you will understand when I say the Government has to prove a fact to you, I mean it has to prove to you that fact with this degree of proof that I have just described and defined; that is, beyond a reasonable doubt, even though I may not repeat those exact words. When I say you may find a fact, I mean you must find it proven beyond a reasonable doubt, even though I simply use the word "find".

Now, there are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, which is the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule the law makes no distinction

between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury must be satisfied beyond a reasonable doubt from all of the evidence in the case.

There are two words that I would define for you. The word "inference": an inference is a deduction or conclusion which reason and common sense leads the jury to draw from facts which have been proven.

In arriving at your decision, you, the jury, may draw inferences from those facts which are admitted or stipulated to by counsel -- you will recall that there were certain stipulations, where counsel agreed that in respect to the handwriting expert, there was no need to use that, because it was admitted that the defendant wrote these particular letters, which are exhibits in evidence. That is called a stipulation.

So, in arriving at your decision, you, the jury, may draw inferences from those facts which are either admitted, or stipulated to, or facts which you find to have been proven beyond a reasonable doubt.

However, no inference is reliable which is drawn from facts, which are themselves uncertain.

In other words, the jury should not indulge in speculation or conjecture.

The other word that I would define is the word "presumption". These are generalities, before we get to the particulars.

A presumption is a conclusion which the law requires a jury to make from particular facts, in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary; but, unless so outweighed the jury are bound to find in accordance with the presumption. This defendant is presumed innocent unless you find beyond a reasonable doubt that he is guilty of the offense or offenses with which he is charged.

Now, the indictment against this defendant contains three separate counts. Each count is a separate and distinct cause of action. Each count embodies or contains allegations which allege a separate and distinct claim under the law.

The mere fact that you may find the defendant guilty on one count, or not guilty on one count, does not necessarily affect his guilt or innocence on any other count. Each one is to be considered separately.

Now, taking up Count 1. Count 1 alleges that on or about the second of April, 1973, continuing up to and including the 19th day of April, 1973, in the District of Connecticut, the defendant -- naming him -- unlawfully, willfully and knowingly did attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, to wit, materials and requirements used in the operation of United Aircraft Corporation, by extortion, that is, by attempting to obtain money from another person, namely, an agent and representative of the United Aircraft Corporation, with that person's consent, induced by the wrongful use of threatened force and the fear of injury to persons, property and to the business being conducted by United Aircraft Corporation, in violation of Title 18, United States Code, Section 1951.

Now, this statute, which is entitled "Interference with Commerce by Threats or Violence", reads in part:

"Whoever, in any way or degree, obstructs, delays or affects commerce, or in the movement of any article or commodity in commerce, by extortion, or attempts or conspires to do so, or commits or

threatens physical violence to any person or property, in furtherance of a plan or purpose to do anything in violation of this section," shall be guilty of an offense against the United States.

The term "extortion" means the obtaining of property, or the attempt to obtain property or money from another, with his consent, induced by the wrongful use of actual or threatened force, violence, or fear, or under color of official right.

In order to establish the offense charged in Count 1 of the indictment, the Government must prove three essential elements:

One, that the defendant attempted to induce his victim to part with property;

Second, he did so by extortion, as hereinbefore defined; namely, by the use of threats and fear;

Third, that in doing so interstate commerce was delayed, interrupted or adversely affected.

The Government is required to establish each of these elements beyond a reasonable doubt. The law never imposes upon the defendant in a criminal case the burden of introducing any evidence, or calling any witnesses.

As stated before, the Government must show beyond a reasonable doubt that interstate commerce

was delayed, interrupted, or adversely affected by the acts charged in Count 1. I am not going to give you an abstract definition of interstate commerce. I instruct you, instead, that you may find interstate commerce within the meaning of these instructions, if you find beyond a reasonable doubt, either:

Number one, that the United Aircraft Corporation was formed for the purpose of doing business both within and without the State of Connecticut, and actually did business outside of the State of Connecticut;

Second, that the United Aircraft was designed to, and did manufacture and provide goods and commodities for industry doing business in interstate commerce.

Now, interstate commerce may be adversely affected within the meaning of these instructions, by an increase in the cost of doing business in interstate commerce, or by the reduction of the profits from interstate commerce. It is not necessary to show an actual interruption or delay.

It is not necessary for the Government to show that the defendant intended to specifically obstruct, delay or affect interstate commerce.

All that is necessary as to this issue is that the Government's evidence prove that the defendant intended to commit an act proscribed by the statute, the natural consequences of which would be to obstruct, delay or affect commerce, including, one method, by an increase in the cost of doing business in interstate commerce -- through the United Aircraft Corporation, in this instance.

Intent and motive should never be confused. Motive is what prompts a person to act, and intent refers only to the state of mind with which the act is done. Good motive alone is never a defense where the act done is a crime, so the motive of the accused is immaterial, except insofar as evidence of motive may aid determination of state of mind or intent.

It is obviously impossible to always ascertain or prove directly what were the operations of the mind of a defendant, on the issue of willfulness.. We cannot look into a person's mind and see what his intentions are or were. But, a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case enables us to infer with a reasonable degree of accuracy what another's intentions were in

doing or not doing certain things.

With a knowledge of definite acts, we may draw definite, logical conclusions. In our personal everyday affairs we are continually called upon to decide from the actions of others what their intentions or purposes are; and experience has taught us that frequently actions speak more clearly than spoken or written words.

The term "fear" does not necessarily refer to physical fear or fear of violence alone. It may also include fear of economic loss.

Now, in Count 2, the Second Count -- and you will have this in the jury room to read, at your leisure -- it alleges, under Count 2 that on or about the 2nd of April the same defendant knowingly and with intent to extort money or other things of value from an agent and representative of United Aircraft Corporation, did deposit in an authorized depository for mail matter, to be sent and delivered by the Postal Service, a written communication postmarked April 2nd, 1973, addressed to United Aircraft Corporation, Corporate Counsel, Main Street, East Hartford, Connecticut, to Mr. Baldwin, and containing a threat to injure the person of the addressee, and others, that is, retaliation against

the Chairman, the President, and legal counselors of United Aircraft Corporation and their respective families, in violation of Title 18, Section 876.

Now, 876 is a separate statute, part of which reads as follows:

"Whoever knowingly deposits in any post office or any authorized depository for mail matter, to be sent or delivered by the Postal Service, or knowingly causes to be delivered by the Postal Service, according to the directions thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand for request for ransom or reward, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered as aforesaid, any communication containing any threat to injure the person of the addressee or of another", is guilty of a violation against the laws of the United States.

The word "extortion" I previously defined for you, the meaning of the term extortion, in connection with the offense charged in Count 1, so I will not repeat it again.

In regard to the Second Count there are three

essential elements required to be proved in order to establish the offense charged in the Second Count of the indictment.

First, that the defendant willfully and knowingly deposited said letter in a United States Post Office, or authorized mail depository, with the intent that it be delivered by the Post Office Department to the addressee whose name appeared thereon.

Second, that said letter was sent with the intent to extort from any person, money or any other thing of value.

And, third, that said letter contained a threat to injure the person of the addressee, or of another or others.

With respect to the first element, the Government must prove that the defendant's depositing of said letter in the United States mail was knowingly and intentionally done, and that said letter was deposited in an authorized mail depository.

In that respect we don't have to dwell on that; I think the defendant in his testimony, you will recall, admitted that he mailed the particular letters, so that particular element is

not in great dispute. So, we will skip over that part, defining what a mailbox is, or a mail depository.

The second element, in order to prove the second element, the Government must prove that the letter in question was mailed with intent to extort. With respect to this element you will have with you in the jury room Government's Exhibits 1 through 8, and 2, 4, 6 and 8, which are the letters addressed to Mr. Baldwin, or United Aircraft Corporation, and received by him. The meaning of the intent, as distinguished from motive, has been previously adequately explained in Count 1 of the indictment, and I shall not repeat that again.

The Government must establish beyond a reasonable doubt that said letter contained the threat alleged in the indictment. It is not necessary for you to find that the defendant actually intended to carry out his alleged threats, that is, to injure the addressee or another, in order to convict him. The question of whether he ever planned to follow up on the intent expressed is irrelevant. The statute is designed to prevent the threat of extortion from being made at all.

The offense, as defined by law, and as charged

in the indictment, is complete if malicious threats were made, as charged in the indictment, to the persons named therein, with intent to extort money or to compel the persons so threatened to do an act against their will, whether the persons so threatened gave any money or not.

In regard to intent, the Court, therefore, construes the willfulness requirement of the statute to require only that the defendant intentionally made the threat in said letter, in a context and under such circumstances, wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intent to inflict injury upon the person threatened, and that the statement was not the result of mistake, duress, or coercion.

The statute does not require that the defendant actually intended to carry out the threat to injure. However, to find the defendant guilty of the offense charged in Count 2, you must find that he acted with intent to extort.

Count 3, which is the third and final count on page 2 of the indictment, reads that on or about the 15th day of April, 1973, in the District of

Connecticut, the defendant knowingly, and with intent to extort money or other things of value from an agent and representative of United Aircraft Corporation, did deposit in an authorized depository for mail matter, to be sent and delivered by the Postal Service, a written communication, postmarked April 15, 1973, addressed to United Aircraft Corporation, Corporate Office, East Hartford, Connecticut, attention Legal Counsel, Mr. Baldwin, and containing a threat to injure the reputation of United Aircraft Corporation, that is, mortification and public scorn for United Aircraft Corporation, in violation of Title 18, Section 876.

That federal statute reads in part:

"Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service, or knowingly causes to be delivered by the Postal Service, according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication addressed to any other

person, and containing any threat to injure the property or reputation of the addressee, or of another", shall be guilty of a crime against the United States.

There are three essentials:

First, that the defendant willfully and knowingly deposited said letter in a United States Post Office, or an authorized mail depository, with the intent that it be delivered by the Postal Department to the addressee whose name appeared thereon;

Second, that said letter was sent with the intent to extort from any person money or any other thing of value; and

Third, that said letter contained a threat to injure the property or the reputation of the addressee or of another or others, or both.

Now, you can see the first and second elements of the crime charged in this count are the same as the first and second elements of the offense charged in Count 2. Therefore, the instructions I have already given you on the first two elements of Count 2 apply with equal force to the first two elements of the crime charged in the third count.

With respect to the third element, the

Government must prove that the letter in question contained a threat to injure the reputation either of the addressee or of others. It is not necessary for the Government to prove that the defendant actually intended to carry out his threat to injure the reputation of the addressee or of others, more specifically, the United Aircraft Corporation. However, the Government must prove that the defendant intended to make the threat, and that he did in fact make the threat, and that he did so with the intent to extort money or a thing of value from someone.

I instruct you, as a matter of law, that a threat to injure the reputation of a corporation is not different in the eyes of the law than a threat to injure the reputation of a natural person.

You will note from the complete recitation of the elements in here that the real, crucial element is the expression, under the statute, and in the allegations, "with the intent to extort". And that is a factual question which is going to rest with the jury. That is the crux of this case: did the defendant act with intent to extort? And that follows through in Count 1, Count 2 and Count 3, throughout this indictment.

You, as jurors, are the sole judges of the credibility of the witnesses, and weight that their testimony deserves.

You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief.

Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the witness stand. Consider also any relation which each witness may bear to either side of the case; the manner in which each witness may be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience in everyday life.

In weighing the effect of a discrepancy,

consider whether it pertains to a matter of importance, or an unimportant detail, and whether the discrepancy results from innocent error or from willful falsehood.

All evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused, should be considered with caution and weighed with great care.

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.

If you believe any witness has been impeached, and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness, or give it such credibility as you may think it deserves.

There was testimony here from law enforcement officers -- at least one or two -- in this case.

The testimony of a law enforcement officer is entitled to no special or exclusive sanctity, merely because it comes from a law enforcement officer.

A law enforcement officer who takes the witness stand subjects his testimony to the same examination, and the same tests, as that of any other witness. And in the case of such officer you should not believe him merely because he is a law enforcement officer. You should evaluate his testimony as you do that of any other witness.

With respect to the defendant, Mr. Strandholt, who testified, you must carefully consider his testimony. An accused person is not obligated to take the witness stand in his own behalf. On the other hand, he has a perfect right to do so, as the defendant has done here.

In weighing the testimony he has given, you should apply the same principles by which the testimony of other witnesses is tested, including the witnesses called by the Government.

An accused person, having taken the witness stand, is before you just like any other witness. He is entitled to the same consideration, and he may have his testimony measured in the same way as any other witness, including his interest in the verdict

which you are called upon to render.

Now, the verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But, do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Now, upon retiring to the jury room you will select one of your number as a Foreman or Forelady, as the case may be. The Foreman will preside over your deliberations, and be your spokesman in court.

After you have retired and have selected a

Foreman or a Forelady of the jury, you will refrain from discussing the case until the Clerk brings in to you a copy of the indictment, and the exhibits which have been offered here in court.

And the reason for that is because after you have retired it is customary for either or both counsel to ask the Court to either enlarge upon or correct some statement made in the Court's charge, defining the crime alleged in the indictment. And if the Court believes that there is some merit to their claims, you will be called back, and the Court will try to further explain or correct, as the case may be, a remark or statement that the Court might have made in its charge.

However, when the Clerk brings in to you the exhibits and the indictment, you will know then that you will proceed with your deliberations.

At one o'clock I will have the Marshal knock on your door, in the presence of the Clerk, and take your order for any sandwiches or anything you would like to eat, so that your deliberations will not be interrupted.

I think there is one other thing. We have an alternate -- I know that he will be disappointed that he will not be able to continue -- Donald R.

Kramer.

Mr. Kramer, the Court thanks you for your attention in this matter, and would excuse you at this time. I believe that he will be excused until further notice from the Clerk's office. Thank you, Mr. Kramer, for your assistance here in this case.

We will wait until the Bailiff notifies us that the jury room is clear, so that there will only be twelve in there together, because after the Court's charge has been given, it would be improper to have thirteen in there at this time. (Pause.)

The jury may now retire.

(In the absence of the jury.)

THE COURT: Counsel for the Government, do you have any exceptions to note for the record?

MR. BOWMAN: No exceptions, your Honor.

THE COURT: Counsel for the defendant, do you have any exceptions to note for the record?

MR. CLIFFORD: Just one, your Honor, and in view of my request to charge, probably not unexpected.

But, on request to charge number 5, which in effect is a charge for jury nullification, which I submitted to your Honor. And in light of that, the language of the Court, indicating that the jury is

duty-bound to follow the law, and their personal view of the law is not controlling, insofar as that language conflicts with the doctrine of jury nullification, the defendant takes exception to that, your Honor.

Otherwise, the charge is satisfactory.

THE COURT: The Court will let the jury charge stand.

Counsel will view the form of the indictment, and also the exhibits which are in the possession of the Clerk, to see if they are in proper order to be submitted to the jury.

MR. CLIFFORD: The form of the indictment and the exhibits are satisfactory to the defendant.

MR. BOWMAN: And satisfactory to the Government, your Honor.

THE COURT: Very well, counsel are in agreement?

MR. BOWMAN: Yes.

MR. CLIFFORD: Yes, your Honor.

THE COURT: The Clerk will deliver the exhibits to the jury, with the indictment.

(Pause.)

THE CLERK: The jury has the indictment and the exhibits, your Honor.

THE COURT: Any exceptions by counsel for the Government?

MR. BOWMAN: No, your Honor.

THE COURT: Any exceptions by counsel for the defendant?

MR. CLIFFORD: Yes, your Honor, on the grounds that the Court failed to instruct, in question number 1, that the finding of that essential element can be only based upon the facts of this record, and the evidence adduced in this trial, and not upon speculation.

THE COURT: Very well. The exception is noted.

Recess, Mr. Bailiff.

(Recess.)

(In the absence of the jury.)

THE COURT: The question submitted to the Court by the jury reads as follows: "The jury wishes to know whether or not they can make any specific recommendation with their verdict".

Call the jury.

(In the presence of the jury.)

THE COURT: The question submitted by the jury reads as follows: "The jury wishes to know whether they can make any specific recommendation with

their verdict."

And the answer is no, the law provides for the Court to determine what sentence, if any, is required. The Court is provided with all of the benefits of the statute, and the penalties, if any, that are to be inflicted. It is not within the province of the jury.

The jury may now retire.

(In the absence of the jury.)

THE COURT: The Court stands in recess, Mr. Bailiff.

(Recess.)

(The jury returned with their verdict at 3:41 P.M.)

THE CLERK: Will the defendant please rise?

Ladies and gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN: We have.

THE CLERK: Will the Foreman identify himself by name, for the record, please?

THE FOREMAN: Chester P. Madey.

THE CLERK: What is your verdict on Count 1?

THE FOREMAN: On Count 1 we find the defendant not guilty.

THE CLERK: What is your verdict on Count 2?

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 74-1305

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

V.

SOGAARD NORMAN STRANDHOLT

DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief and Appendix of the defendant-appellant in the above matter was mailed postage pre-paid to Harold James Pickerstein, Esq., Assistant United States Attorney, Bridgeport, Connecticut.

Thomas D. Clifford

Thomas D. Clifford
Federal Public Defender
770 Chapel Street
New Haven, Connecticut

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BRIEF OF DEFENDANT-APPELLANT SOGAARD NORMAN STRANDHOLT

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PLAINTIFF-APPELLEE

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BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF THE CASE

Defendant was charged in a single indictment alleging three counts. The first count alleged extortion directed to United Aircraft Corporation, 18 U.S.C. §1951; the second count alleged use of the mails containing a threat to extort, 18 U.S.C. §876 and count three alleged use of the mails to extort with a threat to

the reputation of United Aircraft Corporation.

Defendant pleaded not guilty to each count of the indictment and on October 7, 1973 a jury trial commenced before Judge Clarie. On October 18, 1973, after 3 hours deliberation, the jury returned a verdict of not guilty on Count One and guilty on Counts Two and Three.

On February 25, 1974 defendant was sentenced to three years imprisonment on Count Two, execution of the term of imprisonment suspended after six months. Imposition of sentence on Count Three was suspended. Defendant was released, pending appeal, on his personal appearance bond in the amount of $10,000.

Timely notice of appeal was filed on behalf of the defendant.

STATUTES INVOLVED

United States Code, Title 18

§876 Mailing threatening communications.

Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnaped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits or causes to be delivered as aforesaid, any communications with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more that $500 or imprisoned not more than two years, or both.

United States Code, Title 18

§1951 Interference with commerce by threats or violence.

(a) Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical biolence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

QUESTIONS PRESENTED

1. Did the trial court err in refusing to instruct the jury on a timely requested charge as to the jury's power of nullification when the power of jury nullification was the linchpin of the defense?

2. Did the trial court err by affirmatively instructing the jury that they were bound by the law as instructed by the court and, in so doing, deprive defendant of his right to a jury trial under the Sixth Amendment?

THE FACTS

In February 1966 defendant was hired by Heliparts, Inc. (Heliparts) in Bridgeport, Connecticut, as quality control manager and chief inspector.(T. 167). Defendant has been employed in the field of quality control inspection since 1950 and has received formal training and education in this area. (T. 167). Prior to going to Heliparts defendant was informed by personnel in the Department of Contract Administration Service (DECAT) in Bridgeport that the operation at Heliparts, a supplier of precision helicopter parts, did not appear to be quite right.(T. 170) He was requested to pass information back to DECAT if he was employed by Heliparts (T. 170).

While employed by Heliparts, several occurances concerning defective parts and illegal practices came to the defendant's attention. (T. 171) Upon reporting these to DECAT, he was advised to contact the security office at Sikorsky Helicopter since the parts involved were Sikorsky parts or supplied to owners of Sikorsky helicopters. (T. 172-175). Accordingly defendant contacted a George Cleveland(deceased prior to this indictment) of the Sikorsky security office to

whom defendant furnished a taped conversation concerning his observations at Heliparts (T. 177), oral information and a written report (Def. Ex. A-7). Defendant wanted Cleveland to turn over his reports to the Government at that time (T. 178) and Cleveland assured defendant that "this would be taken care of". (T. 179).

The written report of defendant (Def. Ex. A-7) was given to Cleveland on July 15, 1966. The document speaks for itself in detailing the transactions at Heliparts in supplying defective parts, untested parts to owners of Sikorsky helicopters. Defendant's testimony amplified the report in important details. For instance, item 1 refers to an engineering design blueprint stolen from Sikorsky, taken to Heliparts, microfilmed by defendant (T. 182) for Heliparts and then returned to Sikorsky (T. 180-182). Aside from the unsavory industrial espionage aspects, the most significant fact about the blueprint is that the part portrayed would not have undergone reliability or safety tests (T. 181). There were other such design and engineering blueprints in the Heliparts microfilm library (T.183). Item 6 refers to a surplus sale at Sikorsky where Heliparts, through the connivance of Sikorsky employees, received more from the sale than purchased. These

surplus parts were then refurbished at Heliparts, marked with a Sikorsky inspection stamp by defendant, supplied a phony certificate of quality control and then sold back usually to the government. (T. 185-189). The quality control certifications were taken from Sikorsky by Sikorsky employees and placed in the Heliparts file until needed (T. 190). Heliparts had Sikorsky markings and inspection stamps available which was unusual since Heliparts and Sikorsky were competitors (T. 191). The defendant certified the parts without quality control tests, on the basis of phony certifications because Mr. Cleveland was supposed to notify the authorities that these parts were going through. (T. 188). Defendant reported these incidents by part number to Mr. Cleveland (T. 193).

While employed at Heliparts, defendant observed that airplane crashes were salvaged by Heliparts; the salvaged parts were then sold back to the government as new parts after being cleaned up (T. 192). Prior to such sales, no quality control or reliability testing was done on the salvaged parts (T. 193). Defendant was fearful of this procedure because he did not know whether these salvaged parts

contributed to crashes (T. 194). The advertisement of Heliparts (Def. Ex. A-6), indicating "Sikorsky parts for all models in our inventory" came either from salvaged aircraft or stolen from the Sikorsky warehouse (T. 197). Heliparts further advertised that it was in compliance with the quality control requirements of the military and FAA whereas in fact defendant, as quality control manager, knew that such compliance was impossible (T. 199).

Item 7 of Def. Ex. A-7 refers to crutch assemblies which hold rotor blades in place when not in use (T. 200) thus reducing stress and strain on the blades without endangering the tolerance level (T. 200). The crutch assemblies in question were purchased by Heliparts as surplus from the St. Louis Ordinance Depot. The assembly had a shelf life of two or three years and these assemblies has been on the shelf for 10 to 12 years (T. 200-01). They were then treated with lead and painted by Heliparts and sold back, as new, to the government. (T. 201).

In one of his communications with Sikorsky security personnel, defendant had asked for "amnesty" because

he was falsely certifying the parts and he wanted to be relieved of responsibility. (T. 207-208). Upon leaving Heliparts, defendant was employed elsewhere in the area of quality control inspection (T. 208). Defendant, in November 1972, read in the newspaper that United Aircraft Corporation (parent corporation of Sikorsky) was suing Heliparts in a civil suit (T. 208) and defendant's first reaction was surprise that the Government was not involved because he thought the government had been informed about the activities at Heliparts (T. 209). Defendant then called United Aircraft and spoke with a Mr. Chambers, (T. 210) who didn't know of defendant's previous written reports and was amazed that they existed (T. 124). A meeting was held on November 21, 1972 at United Aircraft with defendant and attorneys of United Aircraft. As a result of that conference and defendant's knowledge of the events described above, defendant was subpoenaed to testify on behalf of United Aircraft (T. 52).

Mr. Baldwin, assistant corporation counsel for United Aircraft, confirmed that it was believed that

Sikorsky blueprints were surreptitiously microfilmed (T. 75); that Heliparts had a method of applying Sikorsky trademarks and inspection stamps (T. 75); that design blueprints, taken prior to prototype, would be for parts which had not been subjected to testing (T. 64). Mr. Baldwin also confirmed that a prototype blueprint had been stolen from Sikorsky, a part therefrom manufactured by Heliparts and returned by the Navy by mistake to Sikorsky because of an improper fit (T. 78). Mr. Baldwin was also concerned because a Sikorsky part, which had been scrapped, ended up as a defective spindle in a crashed helicopter with loss of three lives (T. 69-71).

Mr. Chambers, a staff attorney for United Aircraft, was also present at the November 21, 1972 meeting with defendant (T. 120). He recalled defendant stating that helicopter crashes made defendant to decide to leave Heliparts (T. 121). The meeting also concerned itself with Sikorsky's involvement in airplane crashes which may in some way be attributed to Heliparts, or Heliparts' pilferage of Sikorsky parts or Heliparts' espionage within United Aircraft. (T. 122-23).

On November 24, 1972, FBI agent Craig met defendant in the FBI Bridgeport office (T. 141). There was a discussion with defendant concerning the activities at Heliparts and Sikorsky (T. 142) and defendant was informed that the five year statute of limitations would bar any prosecution concerning the defective parts (T. 143).

At trial, defendant did not seriously contest the authorship of the letters in question or the material allegations of the indictment. The defense is best outlined by the statement of defendant (app. 8-14) taken immediately after his arrest and introduced into evidence by defendant. Defendant told the FBI, upon his arrest, that he did not want the money but just wanted to "shake up" United Aircraft (app. 13). Defendant said "he became angry with United Aircraft because he felt that the people involved should have been criminally prosecuted because they had caused lives to be lost in helicopter crashed" (app. 12). Defendant further told the FBI that he just wanted to get this whole story out in the open, so that people would know about it." (app. 13) Defendant also

stated that he picked the Holiday Inn as a drop-off location, because he was familiar with the location, knew it was right next to the FBI office and he wanted to make it easy for the FBI if they were going to catch him. (app. 13-14)

Defendant submitted timely requests to charge including the following:

> "5. The jury has a subjective and sovereign power to reject instructions on the law and to acquit the defendant despite evidence establishing guilt. The jurors and their respective consciences are the ultimate judge of their verdict.
> United States v. Dougherty, _____F.2d_____
> (D.C.C.A.)
> (Concurring opinion of Judge Bazelon)
> (11 Crim. L. Report 2339 July 26, 1972)."

This request was denied and exception to the denial properly taken. (T. 267). Exception (app. 39-40) was also taken by defendant to the following instruction of the court:

> "Regardless of any opinion you may have as to what you think the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court." (app. 15-16)

Near the end of their deliberations, the jury submitted a written question with counsel duly notified

by the court. The question submitted stated:

> "The jury wishes to know whether or not they can make any specific recommendation with their verdict" (app. 41-42)

The court instructed the jury that they could not; that the question of sentence is for the court to determine (app. 42). The jury retired and quickly returned with their verdict of not guilty on Count I and guilty on Counts II and III.

Subsequent to the imposition of sentence, the government ordered a partial transcript for purposes of investigation but defense counsel does not know the status of that investigation.

ARGUMENT

I. THE TRIAL COURT ERRED IN REFUSING TO INSTRUCT THE JURY ON A TIMELY REQUESTED CHARGE AS TO THEIR POWER OF NULLIFICATION WHEN THE POWER OF JURY NULLIFICATION WAS THE LINCHPIN OF THE DEFENSE.

The right of the jury to acquit a defendant technically guilty of a violation of law is implicit in a whole panoply of restrictions we impose on the prosecuting authority's power to coerce or even merely encourage a verdict which law or logic alone would compel. In 1670, the power of the British government to punish a recalcitrant jury for refusing to deliver a verdict of guilty in a crystal-clear case was stripped from it. Such power has never been restored to that government nor has such power ever been accorded to the government of the United States. Not only is the government powerless to sanction a jury whose verdict frankly defies the law, but its officials are powerless even to instruct a jury to bring in a verdict of guilty "no matter how overwhelming the evidence of guilt." United States v. Spock, 416 F.2d

165, 180 (1st. Cir. 1969); accord, United Brotherhood v. United States, 330 U.S. 395, 408 (1947); United States v. Garaway, 425 F.2d 185 (9th Cir. 1970) Compton v. United States, 377 F.2d 408, 411 (8th Cir. 1967); Edwards v. United States, 286 F.2d 681, 683 (5th Cir. 1960).

The freedom of the jury to bring in a verdict, "in the teeth of both law and facts", Horning v. District of Columbia, 254 U.S. 135, 138 (1920), is also safeguarded by the jealously protected institution of the general verdict. See G. Clementson, Special Verdicts and Special Findings by Juries, 49 (1905); Morgan, A Brief History of Special Verdicts and Special Interrogations, 32 Yale L. J. 575 (1923). The jury is not and cannot by law be required to state reasons for its decisions.

> "Juries decide 'guilty' or 'not guilty', criminal or not criminal, rather than bring in a special verdict as to the commission of the act charged to the accused. Reflected in the jury's decision is a judgment of whether, under all the circumstances of the event and in the light of all known about the defendant, the prohibited act, if committed, deserves condemnation by the law"
>
> Everett v. United States, 336 F.2d 979, 985-6 (CADC 1964) (J. Wright, dissenting)

Similarly, a jury cannot be led to a legally logical conclusion by propounding to it a series of questions, though the questions themselves might provide the proper route by which a logician would reach a verdict. On the contrary, for the judge to pose special questions in a criminal case constitutes reversible error. The recent case of United States v. Spock, 416 F.2d 165 (1st Cir. 1969), both establishes that rule and outlines the compelling reasons which lie behind it.

In Spock, the trial court put to the jury, in addition to the general issue of guilty or not guilty, ten special questions to be answered "Yes" or "No". No argument was advanced that the questions were logically misleading, and the jury was informed that they were to be answered only if a general verdict of guilty was returned. The appellate court, in reversing, based that result on its analysis of the role the jury has traditionally played in the American legal system.

> "Put simply, the right to be tried by a jury of one's peers finally exacted from the King would be meaningless if the King's judges could call the turn. Bushel's (sic) Case, 124 Eng. Rep. 1006 (C.P. 1670). In the exercise of its functions not only must

> the jury be free from direct control in its verdict, but it must be free from judicial pressure, both contemporaneous and subsequent". (Citation omitted)
>
> United States v. Spock, supra at 181.

To ask the jury special questions, the court felt, is to subject it to precisely the sort of judicial pressure which must be avoided. Indeed, it threatens the basic rationale on which trial by jury is based:

> "To ask the jury special questions might be said to infringe on its power to deliberate free from legal fetters, on its power to arrive at a general verdict without having to support it by reasons or by a report of its deliberations, and on its power to follow or not to follow the instructions of the court. Moreover, any abridgment or modification of this institution would partly restrict its historic function, that of tempering rules of law brought to bear upon the facts of a specific case."
>
> United States v. Spock, supra at 181 (Emphasis added). But see United States v. Boardman, 419 F.2d 110 (1st Cir. 1969) holding that Spock does not require a jury nullification charge.

The court in Spock also expressed its fear of forcing a juror step by step toward a verdict which "in the large, he would have resisted". For the jury is created and preserved precisely in order to render decisions which are not merely decisions based upon law.

> "...the jury, as the conscience of the community, must be permitted to look at more than logic....The constitutional guarantees of due process and trial by jury require that a criminal defendant be afforded the full protection of a jury unfettered, directly or indirectly".
>
> United States v. Spock, supra at 182.

It seems clear that we deliberately surround the jury with an array of safeguards whose sole purpose is to protect the jury's historic independence from judicial intrusion, and which makes no sense at all if the jury's function is defined merely as the finding of facts and the mechanical application of the law. If we wanted verdicts of impeccable legal logic, it would be self-defeating to refuse to direct guilty verdicts in clear cases, to insist upon general verdicts or to reverse cases in which juries were led toward a perfectly logicial verdict by a perfectly logicial series

of perfectly logical questions. The conclusion is inescapable: not only do juries have the right to enter verdicts which do not accord with the law as read to them, but that right is one which the courts are zealous in protecting.

The same conclusion is suggested by other facets of the law governing trial by jury. The jury must represent a fair cross-section of the community. Glasser v. United States, 315 U.S. 60 (1941); 28 U.S.C. §§1861-1863. Our insistence on the importance of a truly representative body is sheer folly if we wish the jury to simply apply the letter of the law. Why insist that the defendant have a fair chance to jury-persons who are truly his peers, who can understand his life, problems and motives-who can, in short, empathize - and not just find the facts and coldly apply the law?

If then, the jury plainly does have the right to disregard the instructions of the court on matters of law, and if that right is both recognized and protected in our legal system, the question becomes a narrower one: should the jury be told that they have that perogative? Defendant contends that they should and must be so told.

Defendant's contention is anything but an historical novelty. Leading authorities agree that there were many years in our history when juries were specifically instructed that they could disregard the judge's opinion of the law and determine that matter for themselves. Howe, Juries as Judges of Criminal Law, 52 Harv. L. Rev. 582, 584; Scheflin, Jury Nullification: The Right to Say No, 45 So. Cal. L. Rev. 168, 175-177 (1972).

> "In Georgia v. Brailsford [3 U.S. (3 Dall.) 1 (1794)], a civil trial held in 1794 under the original jurisdiction of the United States Supreme Court, Chief Justice John Jay, after instructing the jury on the law and advising them that, as a general rule, they should take the law from the court, when on to say:
>
> '[I]t must be observed that by the same law, which recognized the reasonable distribution of jurisdiction, you have, nevertheless, a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy'"
>
> Scheflin, supra at 175-6.

At the treason trial of John Fries in 1800, Justice Chase instructed the jury that in criminal cases juries were the judges of the law as well as the facts. Indeed, Justice Chase appended this jury charge to his

answer in his own impeachment trial where he was accused, among other things, of usurping the function of the jury by denying them the right to decide the law. Scheflin, supra at 176. The judge's historic duty to tell the jury that they might determine the law for themselves is preserved in the constitutions of Indiana Article I, §19 ("In all criminal cases whatsoever, the jury shall have the right to determine the law and the facts"). Georgia (Art. I, §2-201) and Maryland (Article XV §5) have similar provisions.

Our forebearers' explicit instructions to the jury had two essential justifications, both of which remain very much alive today.

The first justification rests both on our most fundamental propositions about the nature of the criminal law and on our most fundamental reasons for insisting on a right to a jury trial in criminal cases.

> "'What distinguishes a criminal from a civil sanction and all that distinguishes it... is the judgment of community condemnation which accompanies it and justifies its imposition,' Under his analysis, 'criminality is to be equated with anti-social conduct

> warranting the moral condemnation of society.' If Hart is right, and if the jury has the important function of determining criminal liability, then the guilty verdict of the jury should mean that the community which the jury represents considers this defendant's conduct to be deserving of moral condemnation. Likewise, the jury should never return a verdict of guilty unless this moral condemnation judgment can be made. Thus, even if there appears to be a technical violation of the literal law as it is given to the jury by the judge in his instructions, the jury must not convict unless it can in full and clear conscience say: 'This act is morally condemned by the community'".
>
> Scheflin, supra at 195 quoting from Hart, The Aims of the Criminal Law, 23 Law and Contemp. Prob. 401 (1958).

The central position which the notion of blameworthiness occupies in our concept of criminal law is nowhere more vividly highlighted than in the landmark series of cases culminating in United States v. Brawner, 471 F.2d 969 (C.A.D.C. 1972). In Brawner the court abandoned the formulation of the insanity defense which it had adopted in Durham v. United States, 214 F.2d 862 (C.A.D.C. 1954) precisely because it feared that expert dominance deprived the jury of its right and duty to weigh defendant's moral responsibility. In

explaining its decision, the court discussed the nature of criminal responsibility and the need for a jury to assess it:

> "The doctrine of criminal responsibility is such that there can be no doubt 'of the complicated nature of the decision to be made - intertwining moral, legal and medical judgments' (Citations omitted)... The moral elements of the decision are not defined exclusively by religious considerations but by the totality of underlying conceptions of ethics and justice shared by the community, as expressed by its jury surrogate. The essential feature of a jury 'lies in the interposition between the accused and his accuser of the common sense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence'" (Citing Williams v. Florida, 399 U.S. 78, 100 (1970))
>
> United States v. Brawner, supra at 982.

It is, as Chief Justice Bazelon has said, troubling "that we regularly defer to the jury's unique capacity to resolve the moral, legal and medical questions intertwined in the issue of responsibility, and yet we do not make the special function of the jury explicit in the instructions" United States v. Eichberg, 439 F.2d 620, 625 (C.A.D.C. 1971) (concurring opinion); see United States v. Dougherty, 473 F.2d 1113 (C.A.D.C. 1972) (concurring opinion). Since blameworthiness is so central

to criminal law, and since juries exist precisely because they can best assess it, the refusal to tell them that they may assess it appears to be an absurdity.

The second justification for telling the jury the simple truth - that it has the right to nullify - is equally compelling. It was phrased most succinctly by Learned Hand, who said of the jury, "... since if they acquit their verdict is final, no one is likely to suffer whose conduct they do not morally approve; and this intorduces a slack into the enforcement of law, tempering its rigor by the nullifying influence of current ethical conventions." United States ex. rel. McCann v. Adams, 126 F.2d 774, 775-76 (2d Cir. 1942). This slack in the enforcement of the law is an invaluable safeguard not merely against the over zealous prosecutor, but against official political oppression of all kinds.

> "Jury lawlessness is the greatest corrective of law in its actual administration. The will of the state at large imposed on a reluctant communit, the will of a majority imposed on a vigorcus and determined minority, find the same obstacle in the local jury that formerly confronted kings and ministers"
>
> R. Pound, Law in Books and Law in Action, 44 Am. L. Rev. 12, 18 (1910) as quoted in United States v. Dougherty, supra at 1130, n. 2.

The only reason for the wilfull refusal to give full and honest instructions to the jury regarding the scope of the power which lies in their hands is the fear-more often repeated than substantiated -- than the jury will "run wild" if informed that they may, in certain exceptional circumstances, acquit a man who has broken the law. See United States v. Simpson, 460 F.2d 515 (9th Cir. 1972); United States v. Moylan, 417 F.2d 1002 (4th Cir. 1969) and United States v. Boardman, 419 F.2d 110 (1st Cir. 1969) --- appellate decisions contra to the position of defendant. That fear is baseless. To begin with, such a fear can only be well-founded if one is willing to believe that many of our laws, or determinations by grand juries (or substitute here prosecutors) appear illegitimate in the eyes of the community. Jury verdicts at present do not reflect such a crisis of confidence. See Note, Toward Principles of Jury Equity, 83 Yale L. J. 1023, 1030 (April, 1974). The unwillingness to instruct the jury on their power of nullification also smacks of an undemocratic belief that the people are not to be trusted -- that given the instruction that they may

exercise the power they already possess, the masses will run amuck.

On a practical level, the fear that instructing juries that they may nullify will somehow go to their heads is belied by the simple fact that jurors, too, must live with the persons they acquit; it is therefore highly unlikely that they will acquit those who pose a genuine threat to the community. United States v. Dougherty, supra at 1143 (concurring opinion). In any case, we have before us the examples of Georgia, Indiana, Maryland and the young American republic, in all of which juries are told that they must judge the law as well as the facts. At last report, none has sunk into anarchy.

Finally, the fear that juries will misuse their power is undercut by the "strong internal check that constrains the jury's willingness to acquit."

> "Social psychological research indicates that the internal checks referred to by Chief Judge Bazelon are very real and that, even where he knows of his power of nullification, a juror has a strong psychological need to see the case settled according to his sense of equity. This need should act as a restraint on the juror's feelings of sympathy for the defendant. In light of a judge's probable influence as an authority

> figure on the way jurors perceive their own roles, an instruction which informed the jury of its power to nullify but at the same time conveyed the legal system's expectation that it follows the general law in reaching its verdict would likely retain the necessary tension in the jury's role."
>
> Toward Principles of Jury Equity, 83 Yale L. J. 1023, 1051-2 (1974).

Juries have the right to nullify; our legal system protects that right; the right to nullify is essential to the fulfillment of the jury's most vital function; but the court refuses to so inform the jury. The defendant respectfully suggests that this sleight-of-mind is contra to intellectual honesty within the legal system and failure to inform the jury of its nullification power is error.

II. THE TRIAL COURT ERRED BY AFFIRMATIVELY INSTRUCTING THE JURY THAT THEY WERE BOUND BY THE LAW AS INSTRUCTED BY THE COURT, AND IN SO DOING, DEPRIVED DEFENDANT OF HIS RIGHT TO A JURY TRIAL UNDER THE SIXTH AMENDMENT.

Defendant respectfully requests the Court to incorporate his argument under I above as part of his argument herein. Given the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence, defendant contends that the affirmative instruction of the trial judge in this case was harmful error and acted as an improper influence on the deliberations of the jury thereby depriving him of a fair jury trial.

The jury is <u>not</u> bound to follow the law as given by the court and it is <u>not</u> a violation of the juror's oath to base a verdict upon any other view of the law that that given in the instruction of the court. Assuming that courts have been reluctant to sanction jury nullification charges, it is one thing to remain silent on the subject and quite another to affirmatively invade the exclusive province of the jury and influence the jury in its deliberations. And is not the affirmative

charge in this case also a potential indication of the judge's own feelings on the evidence as presented? And does not the image of violating a sworn duty, if the juror followed his conscience rather than the instructions of the court, connote an illegal act by the juror when, in fact, it is not.

The Sixth Amendment requires an impartial jury in a criminal case and that means a jury free from outside influences. Parker v. Gladden, 385 U.S. 363 (1966); United States ex. rel. DeLucia v. McMann, 373 F.2d 759 (2d Cir. 1967). While "outside" in this context usually denotes outside the courtroom (publicity, prejudicial communications between jurors and court personnel), it is suggested that the outside influences are those which eventually come to bear in the deliberations of the jury. Given the authority-figure of the trial judge, it is respectfully submitted that the affirmative charge of the court in this case improperly acted as an outside influence on the deliberations of the jury. On the facts of this case, the affirmative charge can hardly be regarded as harmless. That the jurors deliberated for hours in a case in which the underlying facts were admitted and that they specifically

inquired as to whether they could recommend a sentence indicate that the affirmative instruction, improperly given, might well have been decisive.

CONCLUSION

Appellant respectfully requests this court to reverse the conviction on the indictment herein.

Respectfully submitted

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FOR THE SECOND CIRCUIT

DOCKET NO. 74-1305

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

V.

SOGAARD NORMAN STRANDHOLT

DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief and Appendix of the defendant-appellant in the above matter was mailed postage pre-paid to Harold James Pickerstein, Esq., Assistant United States Attorney, Bridgeport, Connecticut.

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